

PARTS 800—810 [RESERVED]

PART 811—TAX EXEMPTION OF OBLIGATIONS OF PUBLIC HOUSING AGENCIES AND RELATED AMENDMENTS

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AUTHORITY: Sec. 7(d), Dept. of HUD Act (42 U.S.C. 3535(d)); secs. 3(6), 5(b), 8, 11(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437).

SOURCE: 44 FR 12360, Mar. 6, 1979, unless otherwise noted.

§811.101 Purpose and scope.

(a) The purpose of this part is to provide a basis for determining tax exemption of obligations issued by public housing agencies pursuant to Section 11(b) of the United States Housing Act of 1937 (42 U.S.C. 1437i) to refund bonds for Section 8 new construction or substantial rehabilitation projects.

(b) This part does not apply to tax exemption pursuant to Section 11(b) for low-income housing projects developed pursuant to 24 CFR parts 950 and 941.

[61 FR 14460, Apr. 1, 1996]

§811.102 Definitions.

The terms *HUD* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

Act. The United States Housing Act of 1937 (42 U.S.C. 1437, et seq.).

Agency or Instrumentality PHA. A not-for-profit private or public organization that is authorized to engage in or assist in the development or operation of low-income housing and that has the relationship to a parent entity PHA required by this subpart.

Agreement. An Agreement to Enter Into Housing Assistance Payments Contract as defined in the applicable Section 8 regulations. The form of agreement for projects financed with

tax-exempt obligations shall be amended in accordance with this subpart.

Annual Contributions Contract (ACC). An Annual Contributions Contract as defined in the applicable Section 8 regulations. The form of ACC for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

Applicable Section 8 Regulations. The provisions of 24 CFR parts 880, 881, or 883 that apply to the project.

Contract. A Housing Assistance Payments Contract as defined in the applicable Section 8 regulations. The form of contract for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

Cost of issuance. Ordinary, necessary, and reasonable costs in connection with the issuance of obligations. These costs shall include attorney fees, rating agency fees, trustee fees, printing costs, bond counsel fees, feasibility studies (for non-FHA-insured projects only), consultant fees and other fees or expenses approved by HUD.

Debt service reserve. A fund maintained by the trustee as a supplemental source of money for the payment of debt service on the obligations.

Financing Agency. The PHA (parent entity PHA or agency or instrumentality PHA) that issues the tax-exempt obligations for financing of the project.

Low-income Housing Project. Housing for families and persons of low-income developed, acquired or assisted by a PHA under Section 8 of the Act and the improvement of any such housing.

Obligations. Bonds or other evidence of indebtedness that are issued to provide permanent financing of a low-income housing project. Pursuant to Section 319(b) of the Housing and Community Development Act of 1974, the term obligation shall not include any obligation secured by a mortgage insured under Section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l) and issued by a public agency as mortgagor in connection with the financing of a project assisted under Section 8 of the Act. This exclusion does not apply to a public agency as mortgagee.

Owner. An owner as defined in the applicable Section 8 regulations.

Parent Entity PHA. Any state, county, municipality or other governmental entity or public body that is authorized

to engage in or assist in the development or operation of low-income housing and that has the relationship to an agency or instrumentality PHA required by this subpart.

Servicing fees. The annual costs of servicing the obligations (including any debt service reserve), including trustee fees, mortgage servicing fees, PHA expenses in connection with annual reviews, maintenance of books and accounts, audit expenses, agent fees and other costs of servicing the obligations.

Trust indenture. A contract setting forth the rights and obligations of the issuer, bondholders, owner and trustee in connection with the tax-exempt obligations. The trust indenture may also include provisions regarding the loan to the owner or these may be set forth in a separate mortgage.

Trustee. The entity that has legal responsibility under the trust indenture for disposition of the proceeds of a bond issuance and servicing of the debt represented by the obligations. The trustee must be a bank or other financial institution that is legally qualified and experienced in performing fiduciary responsibilities with respect to the care and investment of funds of a magnitude comparable to those involved in the financing.

Yield. That percentage rate at which the present worth of all payments of principal and interest to be paid on the obligations is equal to the purchase price.

[44 FR 12360, Mar. 6, 1979, as amended at 61 FR 5212, Feb. 9, 1996; 61 FR 14460, Apr. 1, 1996]

§ 811.103 General.

(a) In order for obligations to be tax-exempt under this subpart the obligations must be issued by a PHA in connection with a low-income housing project approved by HUD under the Act and the applicable Section 8 regulations.

(1) Except as needed for a resident manager or similar requirement, all dwelling units in a low-income housing project that is to be financed with obligations issued pursuant to this subpart must be Section 8 contract units.

(2) A low-income housing project that is to be financed with obligations issued pursuant to this subpart may in-

clude necessary appurtenances. Such appurtenances may include commercial space not to exceed 10% of the total net rentable area.

(b) Where the parent entity PHA is not the owner of the project, the parent entity PHA or other PHA approvable under § 811.104 must agree to administer the contract pursuant to an ACC with HUD, and such a PHA must agree that in the event there is a default under the contract it will pursue all available remedies to achieve correction of the default, including operation and possession of the project, if called upon by HUD to do so. If the field office finds that the PHA does not have the capacity to perform these functions, the Assistant Secretary may approve alternative contractual arrangements for performing these functions.

§ 811.104 Approval of Public Housing Agencies (other than agency or instrumentality PHAS).

(a)(1) An application to the field office for approval as a Public Housing Agency, other than an agency or instrumentality PHA, for purposes of this subpart shall be supported by evidence satisfactory to HUD to establish that:

(i) The applicant is a PHA as defined in this subpart, and has the legal authority to meet the requirements of this subpart and applicable Section 8 regulations, as described in its application. This evidence shall be supported by the opinion of counsel for the applicant.

(ii) The applicant has or will have the administrative capability to carry out the responsibilities described in its application.

(2) The evidence shall include any facts or documents relevant to the determinations required by paragraph (a)(1) of this section, including identification of any pending application the applicant has submitted under the Act. In the absence of evidence indicating the applicant may not be qualified, the field office may accept as satisfactory evidence:

(i) Identification of any previous HUD approval of the applicant as a PHA pursuant to this section;